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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,682	01/27/2004	Richard J. Roberts	CMJ-113-A	1440

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Thomas D. Helmholdt  
Young & Basile, P.C.  
Suite 624  
3001 West Big Beaver Road  
Troy, MI 48084

EXAMINER
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RAMIREZ, RAMON O

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/765,682

Applicant(s)

ROBERTS, RICHARD J.

Examiner

RAMON O. RAMIREZ

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7, 8, 10, 11, 15 and 16 is/are rejected.
- 7) ☒ Claim(s) 3-6, 9, 12-14 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

*Detailed Action*

This is the second Office Action corresponding to amendment filed Dec 20, 2004. The application contains 20 claims. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*Claim Objections*

Claims 1-20 are objected to because of the following informalities: All the independent claims includes a clause reciting the angled member being *engageable* with a vertical surface. This may be interpreted as the vertical surface being a positive element of the invention. The examiner suggests using - - adapted to be engaged - - to clarify that the surface is not considered a positive element of the invention sought to be patented. Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

Claims 1, 2, 10, 11, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyer (Pat No 5,381,738).

The patent to Meyer discloses a bracket for supporting a shelf, said bracket comprising a first elongated portion (22), a second elongated portion (14) and a cross brace (18); the elongated members having enlarged portions (46, 50) wherein the cross brace is engaged to the elongated members; the section of the cross brace between its two ends is considered to be the receptacle recited in claim 11.

*Claim Rejections - 35 USC § 103*

Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer.

The surface of the cross brace member of Meyer can receive any type of indicia for aesthetics, or advertisements.

Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer in view of Kluge (Pat No 6,053,465).

The patent to Kluge shows another shelf bracket holder comprising two elongated portions and a cross brace (27) having a hook portion (45) for supporting an item from the cross brace. It would have been obvious to one skilled in the art at the time the invention was made to have provided the bracket shown by Meyer with a hook on the cross brace as shown by Kluge to support an item from the cross brace and improved the utility of the device.

*Allowable Subject Matter*

Claims 3-6, 9, 12-14 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 18 is allowed.

*Response to Arguments*

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Armstrong et al. (4,805,863) and Arbisi (5,826,851) show brackets having a cross brace portions engaged in enlarged portions on the elongated members.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMON O. RAMIREZ whose telephone number is (703) 308-0748 (after April 2005, the phone may be (571) 272-6821). The examiner can normally be reached on MONDAY-FRIDAY, IST FRIDAY OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LESLIE BRAUN can be reached on (703) 308-2156 (after April 2005, the phone may be (571) 272-6815).

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RAMON O. RAMIREZ  
Primary Examiner  
Art Unit 3632

ROR  
February 7, 2005